Office-Supreme Court, U.S.
FILED
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No. 80-986

In The

Supreme Court of the United States

OCTOBER TERM, 1981

THE NORTH HAVEN BOARD OF EDUCATION,
Petitioner,
V.
TERREL BELL, *et al.*,
Respondents,
and
THE TRUMBULL BOARD OF EDUCATION,
Petitioner,
V.
UNITED STATES DEPARTMENT OF EDUCATION
AND LINDA POTZ,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF AMICUS CURIAE OF THE YALE LAW WOMEN'S ASSOCIATION

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QUESTION PRESENTED

Whether the regulations issued by the Department of Education prohibiting sex discrimination in educational employment are valid under Title IX of the Education Amendments of 1972.

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North Haven Board of Education v. *Hufstedler*, 629 F.2d 773 (2d Cir. 1980)	3,4,18
Rogers v. *E.E.O.C.*, 454 F.2d 234 (5th Cir. 1971)	21
Rogers v. *Paul*, 382 U.S. 198 (1965)	21
Schlesinger v. *Ballard*, 419 U.S. 498 (1975)	18

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United States v. *Jefferson County Board of Education*, 372 F.2d 836 (5th Cir. 1966), op. adopted en banc, 380 F.2d 385 (5th Cir. 1967) *cert. denied*, 389 U.S. 840 (1967)	21,22
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§902, 20 U.S.C. 1682	3,6
34 C.F.R. 106.51-.61	3
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45 C.F.R. 86.51-.61	3
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Sex Discrimination and Sex Stereotyping in Vocational Education: Hearings Before the House Comm. on Educ. & Labor, 94th Cong., 1st Sess. 109 (1975) (statement of Professor Pamela Roby)	19

Other Authorities:

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S. ANGRIST & E. ALMQUIST, CAREERS AND CONTINGENCIES 163-68 (1975)	9
Bourne & Wikler, *Commitment and the Cultural Mandate: Women in Medicine,* 25 Social Problems 430 (1978)	15
Bunting, Graham & Wasserman, *Academic Freedom and Incentive for Women,* 51 Educ. Rec. 386 (1970)	12
CARNEGIE COMMISSION ON HIGHER EDUCATION, OPPORTUNITIES FOR WOMEN IN HIGHER EDUCATION 96-97, 119-20 (1973)	14,16
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Epstein, *Encountering the Male Establishment: Sex Status Limits on Women's Careers in the Professions,* 75 Am. J. Soc. 965 (1970)	13
S. FELDMAN, ESCAPE FROM THE DOLL'S HOUSE 91-93, 119-23 (1974)	13,16
Fox, *Some Observations and Data on the Availability of Same-Sex Models as a Factor in Undergraduate Career Choices,* 7 Soc. Focus 15 (1974)	10
Friedman, *Congress, the Courts, and Sex-Based Employment Discrimination in Higher Education: A Tale of Two Titles,* 34 Vand. L. Rev. 37 (1981)	8

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J. GAPPA & B. UEHLING, WOMEN IN ACADEME: STEPS TO GREATER EQUALITY 33-34, 59 (1980) 12,16

Goldstein, *Effect of Same-Sex and Cross-Sex Role Models on the Subsequent Academic Productivity of Scholars,* 34 Am. Psychologist 407 (1979) 15

Gordon & Hall, *Self Image and Stereotypes of Femininity: Their Relationship to Women's Role Conflicts and Coping,* 59 J. Applied Psych. 241 (1975) 19

Hacker, *Women As A Minority Group,* 30 Soc. Forces 60 (1951) 19

Heilman, *High School Students: Occupational Interest as a Function of Projected Sex Ratios in Male-Dominated Occupations,* 64 J. Applied Psych. 275 (1979) 9

Holahan, *Stress Experienced by Women Doctoral Students, Need for Support, and Occupational Sex Typing: An Interactional View,* 5 Sex Roles 425 (1979) 13

Holmstrom & Holmstrom, *The Plight of the Woman Doctoral Student,* 11 Am. Educ. Research J. 1 (1974) 10,14

Jason, Moody & Schuerger, *The Woman Law Student: The View From the Front of the Classroom,* 24 Clev. St. L. Rev. 223 (1975) 16-17

Kashket, Robbins, Leive & Huang, *Status of Women Microbiologists,* 183 Science 488 (1974) 12,15

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Lunneborg & Lillie, *Sexism in Graduate Admissions: The Letter of Recommendation,* 28 Am. Psychologist 187 (1972)	14
Mayes, *Women in Positions of Authority: A Case Study of Changing Sex Roles,* 4 SIGNS: J. Women in Culture & Soc'y 556 (1979)	12-13
NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS 11, 100, 103, 104 (1980)	7-8
O'Leary, *Some Attitudinal Barriers to Occupational Striving in Women* 81 Psych. Bull. 809 (1974)	8,19
Sandler, *The Status of Women: Employment and Admissions, reprinted in* 118 CONG. REC. at 5909-12	14
Schein, *The Relationship Between Sex Role Stereotypes and Requisite Management Characteristics,* 57 J. Applied Psych. 95 (1973)	19
Schwartz & Lever, *Women in the Male World of Higher Education* in ACADEMIC WOMEN ON THE MOVE 57, 70-71 (S. Rossi & A. Calderwood eds. 1973)	14,15
Sells, *Sex Differences in Graduate School Survival,* Paper Presented at the American Sociological Association Annual Meeting, New York, N.Y., August 28 (1973)	10
Stake & Granger, *Same-Sex and Opposite-Sex Teacher Model Influences on Science Career Commitment Among High School Students,* 70 J. Educ. Psych. 180 (1978)	9,12

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M. Steele, *Women in Vocational Education* 101 (Project Baseline Supplemental Report 1974) *reprinted in Sex Discrimination and Sex Stereotyping in Vocational Education: Hearings Before the House Comm. on Educ. and Labor,* 94th Cong., 1st Sess. 253-405 (1975) 8

Teghtsoonian, *Distribution by Sex of Authors and Editors of Psychological Journals,* 1970-1972, 29 Am. Psychologist 262 (1974) 16

Tidball, *Of Men and Research,* 47 J. Higher Educ. 373 (1976) 13,14

Tidball, *Perspective on Academic Women and Affirmative Action,* 54 Educ. Rec. 130 (1973) 11

Tidball, *Women's Colleges and Women Achievers Revisited,* 5 SIGNS: J. Women in Culture & Soc'y 504 (1980) 11

White, *Psychological and Social Barriers to Women in Science,* 170 Science 413 (1970) 15

Zuckerman & Cole, *Women in American Science,* 13 Minerva 82 (1975) 10

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INTEREST OF THE AMICUS

The Yale Law Women's Association is an organization of women students at Yale Law School.[1] As women, as students, and as aspiring professionals, the members of the Yale Law

[1]All female students at Yale Law School belong to the Yale Law Women's Association. The organization serves three primary purposes: it creates a sense of community among Yale Law women; it gathers and shares information on issues of particular concern to women, and it works to increase educational and professional opportunities for women.

Women's Association (YLWA) have an interest in the outcome of this case. As women, we support and depend upon the effort made by the Department of Education[2] to eradicate sex discrimination in educational institutions receiving federal funds. As students, we seek the opportunity to learn from faculty members of both sexes in a nondiscriminatory, nonsexist environment. As aspiring professionals, we need faculty sponsors who will not hesitate to support us in our efforts to achieve academic and professional excellence. The regulations at issue here help achieve each of these ends.

The YLWA strongly endorses respondents' arguments that educational employees as well as students are among the direct beneficiaries of Title IX. In this brief, however, we wish to emphasize the inseverable link between employment discrimination and discrimination against students. We will demonstrate that female students — a group which all parties to this litigation agree are protected by Title IX — are themselves harmed by the discriminatory employment practices of federally funded educational institutions.

This brief is submitted in support of respondents with the consent of all parties to the case pursuant to Rule 36.2 of the Supreme Court Rules.

STATEMENT OF THE CASE

Title IX of the Education Amendments of 1972 proscribes discrimination on the basis of sex under any educational program or activity receiving federal financial assistance. Section 901(a) of the statute, 20 U.S.C. § 1681 (a), provides:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the

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[2]At the time this litigation was commenced, jurisdiction over Title IX rested with the Department of Health, Education, and Welfare. On May 4, 1980, jurisdiction over Title IX was transferred to the new Department of Education.

> benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....

Section 902 of the statute, 20 U.S.C. § 1682, authorizes federal agencies that extend financial assistance to any educational program or activity "to effectuate the provisions of section 1681" by issuing "rules, regulations or orders of general applicability." Pursuant to this provision, the Department of Health, Education and Welfare (HEW) issued regulations, codified at 45 C.F.R. Part 86 (1975). Subpart E of these regulations, 45 C.F.R. §§ 86.51 - .61, prohibited federally funded educational institutions from discriminating on the basis of sex in various aspects of the employment process, including recruitment, hiring, compensation, and fringe benefits. In May 1980, these regulations were reissued by the Department of Education and codified at 34 C.F.R. §§ 106.51 - .61.

The two actions consolidated in this case, *North Haven Board of Education* v. *Bell* and *Trumbull Board of Education* v. *Bell,* raise the issue of the validity of Subpart E of the regulations under 20 U.S.C. §§ 1681-1682. The facts of these cases are as follows.

In January, 1978 a tenured teacher in the North Haven school system filed a private complaint with HEW, alleging that the Board of Education had refused to rehire her because she had taken a one-year maternity leave. In response to her complaint, HEW began an investigation of the school system's employment policies. North Haven refused to comply with HEW's request for relevant information, asserting that HEW lacked authority under Title IX to regulate educational employment practices. The North Haven Board of Education then brought an action in federal district court seeking injunctive and declaratory relief.

The second case before the court involves a similar set of circumstances. Respondent Linda Potz, a former guidance counselor in the Trumbull school system, filed a complaint with

HEW alleging that the Board of Education had discriminated against her on the basis of sex. She claimed, *inter alia,* that the school system had given her inferior job assignments, had provided her with inadequate working conditions and had failed to renew her contract. *North Haven Board of Education* v. *Hufstedler,* 629 F.2d. 773, 775 (2d Cir. 1980). HEW undertook an investigation and determined that the Trumbull Board of Education had, in fact, violated Title IX.[3] In September 1978 HEW ordered Trumbull to take corrective action, including the reinstatement of Potz. The Board of Education refused and filed this action, seeking declaratory and injunctive relief against both HEW and Potz.

In both the *North Haven* and *Trumbull* cases, the school boards challenged HEW's authority to issue Subpart E of the regulations. In both cases, the district court granted the boards' motions for summary judgment, holding that HEW had exceeded its regulatory authority in issuing the regulations contained in Subpart E. HEW appealed both decisions. On July 24, 1980 the United States Court of Appeals reversed the judgments, holding that "HEW has authority under Title IX to promulgate the employment discrimination regulations at issue here." *North Haven,* 629 F. 2d at 786.

Certiorari was granted in these consolidated cases on February 5, 1981.

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[3]HEW's findings included a determination that the school district's discriminatory treatment of respondent Potz had a definite impact on students. "The move of complainant's office to the gym had a demeaning effect on the complainant in the eyes of her...counselees." Joint Appendix at 38. From HEW's findings, it also appears that Potz was given a heavier caseload than her male co-workers, and thus her counselees, who were mostly female, were less well served than the male students counseled by her male counterparts. *See id.* at 38. *See also* affidavit of Linda Potz Evanko, *id.* at 52.

SUMMARY OF ARGUMENT

Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded educational programs. Sex discrimination in educational employment denies students, on the basis of sex, full benefits of those programs. Thus, the Department of Education was plainly acting within its statutory authority when it promulgated regulations prohibiting sex discrimination in educational employment.

Indeed, the language and the legislative history of Title IX suggests that it confers authority on the Department of Education to protect employees directly. But should any doubts as to Congressional intent on this point arise, an examination of the detrimental effect of discriminatory employment practices on the equal educational opportunities of *students* compels the conclusion that these regulations are well within the scope of Title IX.

Sex discrimination in educational employment denies students, on the basis of sex, full benefits of federally funded educational programs. At all levels of instruction, discrimination against female employees deprives female students of role models and sponsors available to their male counterparts. Social science evidence demonstrates how profoundly this scarcity of female models undercuts the aspirations and achievements of female students. Studies also indicate that a lack of female mentors and sponsors restricts women students' access to academic and professional careers. Sex discrimination in educational employment perpetuates judicially and Congressionally condemned stereotypes regarding the abilities and "proper roles" of women.

Again, social science evidence documents the detrimental effects of such stereotypes on the educational opportunities of young women. Individual instances of discrimination, as well as the cumulative effects of discriminatory practices transmit and reinforce these harmful stereotypes. Precedents from the school desegregation context, moreover, illustrate how strongly a

school's employment policies can affect its learning environment. As this Court's race discrimination cases demonstrate, students learn from what their schools do as well as what they teach. When schools exclude women from important positions, or treat their female employees in a discriminatory and unfair manner, female students suffer.

The transient character of student bodies, coupled with the time consuming nature of judicial or administrative action further renders these regulations necessary to effectuate the provisions of Title IX. Students harmed by discriminatory employment practices may not immediately recognize the seriousness of their injury or may graduate from the offending institution before an action can be brought. The Department of Education regulations provide an essential administrative mechanism for protecting students against the pernicious effects of discriminatory employment practices. The regulations at issue thus serve the undisputed policy objective of Title IX: the provision of equal educational opportunities for male and female students. They are a valid exercise of the Department of Education's regulatory authority under Section 902 of the statute and should therefore be upheld.

ARGUMENT

THE CHALLENGED REGULATIONS ARE VALID BECAUSE SEX DISCRIMINATION IN EDUCATIONAL EMPLOYMENT DENIES STUDENTS, ON THE BASIS OF SEX, FULL BENEFITS OF EDUCATIONAL PROGRAMS.

The plain language and legislative history of Title IX demonstrate Congress' intention to include educational employees among the "persons" protected by the statute. But even if Congress had not directly addressed the problem of employment discrimination, the regulations at issue would be essential to effectuate the basic purposes of Title IX. For sex discrimination in educational employment not only injures the affected employee; it also injures female students. These injuries deprive students of the benefits of a non-discriminatory education, benefits to which they have an unchallenged statutory right. 20 U.S.C. § 1681(a).

A. Sex Discrimination In Educational Employment Harms Female Students By Depriving Them Of Successful Models, Supportive Advisors, and Professional Sponsors

As Congress has recognized, long-standing and pervasive sex discrimination has contributed to a severe under-representation of women at almost all levels of the academic hierarchy.[4] Common sense suggests, and social science has verified, that this

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[4]During the Congressional debates on Title IX, Senator Bayh pointed to the shortage of female professors and to the "virtual nonexisten[ce]" of female administrators as evidence of "the continued second class status of women in education despite a decade devoted to civil rights." 118 CONG. REC. 5805, 5804 (1972). More recent statistics reveal only limited gains. In 1978-1979, women constituted less than 26% of all university level faculty members. Only 9.6% of full professors and 18.9% of associate professors were female. NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS 100, 104 (1980). Moreover, as of 1976, only 26% of university level administrators were women. *Id.* at 103 (derived data)

scarcity of female faculty and administrators harms female students at all stages of their educational careers.

1. The Scarcity of Female Academics Denies Female Students the Opportunity to Observe Women Achievers and Discourages Them From Entering Nontraditional Careers

When an educational institution discriminates against female academics, it does more than restrict the employment opportunities of qualified individuals. It also deprives female students of emulable models of female achievement and success. The

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A recent study of sex-based employment discrimination in higher education compares these figures with the dramatic increase in the number of doctoral degrees awarded to women in the past ten years and concludes:

> the inability of women to improve their collective position in the academic labor market is not the result of a dearth of qualified applicants. Rather, this situation is at least in part the result of discriminatory hiring and promotion practices...

Friedman, *Congress, the Courts, and Sex-Based Employment Discrimination in Higher Education: A Tale of Two Titles,* 34 Vand. L. Rev. 37 (1981).

Public school employment statistics reveal similar patterns. While women constitute a majority of all elementary school teachers, their numbers decline sharply at the junior high and high school levels. *See* NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS 11 (1980). Moreover, few women occupy high administrative posts in the public school system, and those who do are overwhelmingly concentrated at the elementary school level. As of 1973, women constituted 13.5% of all public school principals, but only 2.9% of all junior high principals and 1.4% of all high school principals. M. STEELE, WOMEN IN VOCATIONAL EDUCATION 101 (Project Baseline Supplemental Report 1974) *reprinted in Sex Discrimination and Sex Stereotyping in Vocational Education: Hearings Before the House Comm. on Educ. and Labor,* 94th Cong., 1st Sess. 253-405 (1975).

importance of such "role models" is well documented in the social science literature.[5] As one study explains:

> Being in daily close touch with working intellectual women...must for many students open and facilitate the development of new conceptions of what is possible in their own lives.

Douvan, *The Role of Models in Women's Professional Development,* 1 Psych. Women Q. 5, 8 (1976).

A shortage of female models undercuts female students' incentives to strive for academic excellence at an early age. The lack of female high school teachers in such traditionally male fields as mathematics and science, for example, has been shown to constrict the career goals of many high school females.[6] As

[5] *See, e.g.,* S. ANGRIST & E. ALMQUIST, CAREERS AND CONTINGENCIES 163-68 (1975) (faculty and occupational role models are particularly important to women making nontraditional career choices); Douvan, *The Role of Models in Women's Professional Development,* 1 Psych. Women Q. 5 (1976) (women students benefit greatly from exposure to female teachers who present diverse models of female professionalism and who clearly enjoy their careers); O'Leary, *Some Attitudinal Barriers to Occupational Striving in Women,* 81 Psych. Bull. 809, 819 (1974) (absence of female models in nontraditional work roles impairs the occupational aspirations and achievements of women).

[6] *See* Stake & Granger, *Same-Sex and Opposite-Sex Teacher Model Influences on Science Career Commitment Among High School Students,* 70 J. Educ. Psych. 180, 186 (1978) (scarcity of female science teachers discourages high school girls from setting science career goals). *See also* Doherty & Culver, *Sex-Role Identification, Ability, and Achievement Among High School Girls,* 49 Soc. Educ. 1 (1976) (high ability high school girls not provided with sufficient inducements and encouragement to promote maximum academic achievement); Heilman, *High School Students' Occupational Interest as a Function of Projected Sex Ratios in Male-Dominated Occupations,* 64 J. Applied Psych. 275 (1979) (perceived gender composition of an occupation influences degree to which high school females consider it a viable career choice).

the materials Senator Bayh put before the Congress in support of Title IX emphasized, the scarcity of female models continues to impair the aspirations of female students at the college level:

> We agree with the observation in the Report of the Women's Action Program that "bias against women professors and administrators in colleges and universities has denied both professional women a just opportunity for work and *students a chance to observe models of female achievement.*"

Letter to Senator Bayh from the National Federation of Business and Professional Women's Clubs, *reprinted in* 118 CONG. REC. 5813 - 14 (1972) (emphasis added).[7] Indeed, studies indicate that the lack of female professors in most academic disciplines is responsible, in part, for the narrow range of occupational choice of a majority of undergraduate women.[8] In addition, the dearth of female models with whom female students can discuss problems, anxieties, and future plans has been identified as an important reason for women's higher dropout rate, especially from graduate programs.[9]

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[7]See also 118 CONG. REC. 5808-09 (1972) (Sex Discrimination in Higher Education Fact Sheet).

[8]*See, e.g.,* Fox, *Some Observations and Data on the Availability of Same-Sex Models as a Factor in Undergraduate Career Choice,* 7 Soc. Focus 15 (1974) (limited number and variety of female professors negatively influences the career aspirations of undergraduate women); Zuckerman & Cole, *Women in American Science,* 13 Minerva 82, 85 (1975) ("As a consequence of the small numbers of women in science, many undergraduates never encounter a woman scientist at all. Although Madame Curie may serve as an inspiring model for some young women, for others she is all too remote and formidable a figure to emulate.").

[9]*See, e.g.,* Holmstrom & Holmstrom, *The Plight of the Woman Doctoral Student,* 11 Am. Educ. Research J. 1, 6-7 (1974); Sells, *Sex Differences in Graduate School Survival,* Paper Presented at the American Sociological Association Annual Meeting, New York, N.Y. (August 28, 1973).

Elizabeth Tidball's studies of "female achievers" further document the critical role that female faculty play in female student success. Based upon investigations of the educational backgrounds of 1,500 women randomly selected from three editions of *Who's Who of American Women,* Professor Tidball found a positive relationship between the number of women on a college's faculty and that college's output of "women career achievers." She concludes:

> the substantial importance of women faculty...can be inferred with considerable confidence. This is not to say that an abundance of adult women role models is the only predictor of subsequent achievement of women students; but it does reinforce the relative importance of this relationship in comparison with other institutional variables.

Tidball, *Women's Colleges and Women Achievers Revisited,* 5 SIGNS: J. Women in Culture & Soc'y 508 (1980).

Tidball's research also underscores the close relationship between an institution's treatment of female personnel and the encouragement it offers to female students:

> the nutritive environment for women undergraduates is closely related to the environment that prevails for women faculty and administrators...one cannot expect a high return on the investment in women students if institutions are uncommitted or hostile to women academic professionals.

Tidball, *Perspective on Academic Women and Affirmative Action,* 54 Educ. Rec. 130, 132-33 (1973).

The dearth of female models engendered by discriminatory employment practices creates a self-perpetuating cycle for women students: because women are discouraged from entering nontraditional academic careers, they fail to become models for

later generations of female students.[10] Moreover, the lack of female professors and administrators fosters skepticism on the part of male educators about women's potential for academic excellence. Such skepticism, in turn, reinforces outdated stereotypes and often leads to further discrimination against female students and job applicants.[11]

2. The Scarcity of Female Administrators Results in Educational Policies Which Neglect the Interests and Aspirations of Female Students

In addition to depriving women students of models of female success, the scarcity of women in faculty and administrative positions often results in the underemphasis or total neglect of educational issues of particular concern to women. Without women in teaching and policy-making positions, the problems of sex stereotyping in textbooks, sex discrimination in job counseling, and sex-based standards for scholarship are unlikely to be solved.[12] Moreover, the scarcity of women in faculty and

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[10]Stake & Granger, *supra* note 6, at 186. *See also* Kashket, Robbins, Leive & Huang, *Status of Women Microbiologists,* 183 Science 488, 494 (1974).

[11]*See, e.g.,* J. GAPPA & B. UEHLING, WOMEN IN ACADEME: STEPS TO GREATER EQUALITY 33-34, 59 (1980) (small number of female academics reinforces men's views of women's allegedly limited potential for successful academic careers; negative gender-based stereotypes become institutionalized in recruitment, admissions, and financial aid practices); Bunting, Graham & Wasserman, *Academic Freedom and Incentive for Women,* 51 Educ. Rec. 386, 386 (1970) (shortage of female professors may condition men's perceptions of women's potentialities; outdated views held by many male professors threaten the intellectual aspirations of women students).

[12]*See* Mayes, *Women in Positions of Authority: A Case Study of Changing Sex Roles,* 4 SIGNS: J. Women in Culture & Soc'y 556, 558, 567-68 (1979) ("The more women in the institution had any authority, the more new attitudes toward women's roles were discussed.... Insofar as social attitudes are related to behavior, women in

administrative posts means women are less likely to be represented on committees dealing with such student-oriented issues as admissions, educational policy, and institutional research, and are less available to serve as advisors to student organizations.

3. The Scarcity of Female Academics on Graduate and Professional Faculties Deprives Female Students of Essential Mentors and Sponsors

Teachers at every educational level do more than simply prepare and present lectures. They also serve as mentors, advisors and sponsors. These functions are especially important at the graduate and professional school level, where the protege system is a prime means of career advancement.[13] In denying fair and equal treatment to female academics and administrators, educational institutions thus restrict women students' access to the collegial networks that are so important for professional training and success.

When a university excludes women from its tenured faculty positions, its female students must seek academic "sponsorship" from male professors who may never have worked with women as colleagues. Such professors all too frequently hold stereotypic views of women's motivations and abilities, and

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positions of male authority can be said to promote some sex-role change for both males and females.") *See also* Tidball, *Of Men and Research,* 47 J. Higher Educ. 373, 376-79 (1976) (data suggest that while most male faculty "are relatively sensitive to issues that affect their women students and arouse their women colleagues," men teaching at institutions with a high percentage of women faculty tend to be the most affirming with respect to these sex-related issues).

[13] *See, e.g.*, S. FELDMAN, ESCAPE FROM THE DOLL'S HOUSE 91-93, 119-23 (1974); Epstein, *Encountering the Male Establishment: Sex Status Limits on Women's Careers in the Professions,* 75 Am. J. Soc. 965 (1970); Holahan, *Stress Experienced by Woman Doctoral Students, Need for Support, and Occupational Sex Typing: An Interactional View,* 5 Sex Roles 425, 426 (1979).

exhibit insensitivity to issues affecting women students. *See* Tidball, *Of Men and Research,* 48 J. Higher Educ. 373 (1976).[14] Members of predominantly male faculties are often reluctant to sponsor female graduate students because of unfounded doubts about women students' commitment to their professions.[15]

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[14]*See also* CARNEGIE COMMISSION ON HIGHER EDUCATION, OPPORTUNITIES FOR WOMEN IN HIGHER EDUCATION 96-97 (1973).

Striking evidence of such harmful stereotypic attitudes is found in Lunneborg & Lillie, *Sexism in Graduate Admissions: The Letter of Recommendation,* 28 Am. Psychologist 187 (1973). This study examined the application files of 123 students admitted to graduate study at the University of Washington over a five year period and found sexist comments (defined as statement implying a lower level of expectation for women than men, or commenting on physical traits irrelevant to graduate study) in 11 of the 38 female files surveyed. Examples included:

> "Pretty she's not, but pleasant and sparkly and energetic she is"; "In personality she shows poise, vivacity, good humor and charm. She makes an excellent social impression, being attractive, well-groomed, and appropriately dressed. I believe she has a fine reputation and I would have no reason to question her character, morals, or emotional health. She is the kind of women who should be encouraged to pursue graduate study"; "She is a quiet yet personable young woman, rather neat and attractive though not likely to unduly distract male graduate students"; "She is task-oriented, self-starting, non-neurotic. An unusual girl graduate student."

Id., at 188.

[15]*See, e.g., Sandler, The Status of Women: Employment and Admissions, reprinted in* 118 CONG. REC. at 5809-12 ("Supposedly, women marry, retire from academic life and waste their years of expensive training. Supposedly, they just aren't as committed to work the way men are. The facts do not support this myth."); Holmstrom & Holmstrom, *supra* note 9 at 2 (31% of the women doctoral students responding to a Carnegie Commission survey reported that professors in their departments did not take women graduate students seriously); Schwartz & Lever, *Women in the Male World of Higher Education,* in ACADEMIC WOMEN ON THE MOVE 57, 70-71 (S. Rossi & A. Calderwood eds. 1973).

Such male professors may also hesitate to accept female proteges because they are unable to view women as their "successors,"[16] or because they believe that they will not derive status from having female "disciples."[17] Finally, male professors who have never worked with women as academic equals may simply view all women — their female graduate students included — as intellectually inferior.[18]

The sponsorship barriers faced by female graduate students directly impair their productivity and academic success. Recent studies indicate that female Ph.D. candidates with male thesis advisors are not as productive as female candidates with female advisors. *See* Goldstein, *Effect of Same-Sex and Cross-Sex Role Models in the Subsequent Academic Productivity of Scholars,* 34 Am. Psychologist 407 (1979). Similarly, a 1974 survey of male and female microbiologists indicated that from the beginning of their professional training, most female microbiologists felt handicapped by a lack of faculty encouragement and support. Female respondents in the survey consistently reported that they received little advice regarding their professional futures and rarely felt pushed to undertake the most challenging academic endeavors. Kashket, Robbins, Leive & Huang, *Status of Women Microbiologists,* 183 Science 488, 492-93 (1974). Studies of female medical students reveal similar patterns.[19]

[16] *See* White, *Psychological and Social Barriers to Women in Science,* 170 Science 413, 414 (1970) ("Unfortunately a man may be hesitant about encouraging a woman as a protege. He may be delighted to have her as an assistant, but he may not see her as his successor or as one who will carry on his ideas, or as a colleague.") *See also* Epstein, *supra* note 13, at 969.

[17] *See* Schwartz & Lever, *supra* note 15, at 70; White, *supra* note 13, at 414.

[18] Schwartz & Lever, *supra* note 15, at 71.

[19] *See* Bourne & Wikler, *Commitment and the Cultural Mandate: Women in Medicine,* 25 Social Problems 430 (1978) (male professors' expectations and proscriptions that women will give priority to marriage and family over medicine have restricted the options of female medical students and led to the definition of certain types of medical work as inappropriate for women).

Lack of academic and professional sponsorship has contributed as well to the disproportionately low percentage of female editors on most scholarly journals. *See* Teghtsoonian, *Distribution by Sex of Authors and Editors of Psychological Journals,* 1970-1972, 29 Am. Psychologist 262, 268 (1974).

A shortage of female mentors and sponsors may also restrict the job opportunities of female graduate students. Under traditional recruiting methods, an academic department's junior faculty positions are often filled by soliciting the recommendations of colleagues at other graduate institutions.[20] In a pervasively male system, both the faculty members contacted and the students recommended are likely to be men.[21]

The barriers faced by female graduate and professional students are thus particularly strong in academic fields dominated by men. *See* S. Feldman, *Escape From the Dolls' House,* 119-23 (1974) (describing difficulties faced by women students in establishing collegial or apprenticeship relationships in five scientific fields). Even in fields in which women have made significant inroads — such as law — however, the problems remain:

> the survey suggests that while giving lip service to equal opportunity the typical law professor harbors doubts with respect to women law students which extend from concern for lack of equal opportunities in the profession to beliefs that women are either not needed or are unsuited for certain areas of the law. Such ambiguous feelings on the part of professors are certainly to be translated into equal ambivalence in their relationship to women law students, resulting in continued "special" treatment for them.

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[20] J. GAPPA & B. UEHLING, *supra* note 11, at 49.

[21] *Id. See also* CARNEGIE COMMISSION ON HIGHER EDUCATION, *supra* note 14, at 119-20.

Jason, Moody & Schuerger, *The Woman Law Student: The View From the Front of the Classroom,* 24 Clev. St. L. Rev. 223, 241 (1975).

Sex discrimination in educational employment thus denies female students of all ages the role models and sponsors they need for academic success and professional advancement. Faculties from which women have been excluded are least likely to develop programs and policies that affirm female students' abilities and aspirations. Discrimination against female academics and administrators directly interferes with women students' attempts to build necessary professional relationships. Clearly, "old boy" systems created by discriminatory employment practices do not accord young women the equal educational opportunities guaranteed them by Title IX. The regulations at issue here prohibit discriminatory practices that impair the educational achievement of women students. They should therefore be upheld.

B. Sex Discrimination in Educational Employment Harms Female Students by Tainting Their Learning Environment with Inaccurate and Derogatory Stereotypes

As recognized by this Court in *Brown* v. *Board of Education,* 347 U.S. 483 (1954), a school imparts much more than its academic curriculum. Educational institutions play a critical role in shaping and transmitting societal values and in helping students "to adjust normally to [their] environment." *Id.,* at 493. When a school discriminates against female employees, its female students are taught that gender is more important than individual merit in determining success and that women are not suited for positions of authority and power. Both individual instances of discrimination and the cumulative effects of discriminatory practices transmit and reinforce these harmful stereotypes.

1. Individual Instances of Discrimination Reinforce Legally Proscribed Stereotypes

As this Court recognized in *Frontiero* v. *Richardson,* 411 U.S. 677, 684 (1973), our nation's "long and unfortunate his-

tory of discrimination" has been predicated on unflattering stereotypes about women. Over the past ten years, the Court has emphasized both the unfairness and the pernicious effect of such stereotypes. In evaluating legal distinctions based on sex, this Court has repeatedly struck down schemes which are based on "archaic and overbroad" generalizations, *Schlesinger* v. *Ballard,* 419 U.S. 498, 508 (1975), or which reflect old notions "that are more consistent with 'the role typing society has long imposed'...than with contemporary reality. *Califano* v. *Goldfarb,* 430 U.S. 199, 207 (1977), quoting *Stanton* v. *Stanton,* 421 U.S. 7, 15 (1975).

Congress has also recognized the harm caused by outdated and inaccurate gender-based stereotypes. In enacting Title IX, Congress considered the role such unfair stereotypes play in justifying and perpetuating discrimination against women in the educational setting:

> We are all familiar with the stereotype of women as pretty things who go to college to find a husband, go on to graduate school because they want a more interesting husband, and finally marry, have children and never work again. The desire of many schools not to waste a "man's place" on a woman stems from such stereotyped notions.

118 CONG. REC. 5804 (1972) (remarks of Senator Bayh).

The facts of the cases before the Court demonstrate how individual instances of sex discrimination in an educational setting can communicate and reinforce derogatory stereotypes. When a female guidance counselor such as respondent Potz has her office moved "to a smaller, poorly heated, and less comfortable space in the gymnasium away from the other counselors" and is required "to perform typing and to run errands not required of male counselors," *North Haven,* 629 F. 2d at 775, her female counselors learn that women who attain professional positions do not have to be treated equally with their male colleagues. When the North Haven Board of Education refuses to rehire a

tenured female teacher who has taken a one year maternity leave, female students are shown the incompatability of childbearing and career goals. They thus find it difficult to believe that the female is no longer "destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas." *Stanton* v. *Stanton*, 421 U.S. 7, 14-15 (1975).[22]

Such individual instances of discrimination send a "silent but potent message" to female students that only men are fit to occupy the most challenging and responsible positions, and that for women to aim for the top would be foolish indeed.[23] The detrimental effects of such "messages" on the self-images of young women is well documented in the social science literature.[24] By proscribing discrimination against individual female

[22]Thus, petitioners' suggestion that discriminatory maternity leave policies could have no effect on students is clearly incorrect. *See* Petitioners' Brief at 107.

[23]*Sex Discrimination and Sex Stereotyping in Vocational Education: Hearings Before the House Comm. on Educ. & Labor*, 94th Cong., 1st Sess. 109 (1975) (statement of Professor Pamela Roby).

[24]*See, e.g.*, Gordon & Hall, *Self Image and Stereotypes of Femininity: Their Relationship to Women's Role Conflicts and Coping*, 59 J. Applied Psych. 241 (1975) (women's perceptions of male stereotypes about women found to be the strongest predictor of female role conflict; role conflict decreased the more potent, supportive and unemotional the woman perceived the male's image of femininity to be); Hacker, *Women As A Minority Group*, 30 Soc. Forces 60, 68 (1951) ("Part of the explanation [for women's secondary economic and social status] may lie in women's having internalized cultural notions of femininity in certain fields, and even the most self-confident or most defensive woman may be filled with self-doubt as to whether she can do productive work."); O'Leary, *supra* note 5 at 814 (prevalence of gender-based stereotypes substantially affects women's self-perceptions and behavioral responses); Schein, *The Relationship Between Sex Role Stereotypes and Requisite Management Characteristics*, 57 J. Applied Psych. 95 (1973) (sex-role stereotypes may deter women from striving to succeed in managerial positions).

employees, the regulations at issue help to eradicate these inaccurate and damaging stereotypes that limit the aspirations and achievements of female students.

2. The Cumulative Effects of Discriminatory Employment Practices Taint the Learning Environment for Female Students

Students need not witness individual cases of unfair treatment to be harmed by sex discrimination in educational employment. The observation of patterns created by discriminatory practices and policies is sufficient. As one court noted:

> Allegedly discriminatory practices which intend or result in limited access of women to, and small numbers of women in, supervisory school positions may well retard society's effort — as reflected in congressional legislation and Supreme Court cases construing the equal protection clause — to eradicate outdated and stereotypic notions about the proper role of women.... If, in fact, women are not appropriately represented in the higher levels of the school hierarchy, students — male and female — may well be presented with the notion that while women may teach, they are not suited, or qualified, to occupy positions of added authority and broader responsibility. Such an impression may well carry over to a view of the appropriate role of women in society as a whole.

Caulfield v. *Board of Education of the City of New York,* 486 F. Supp. 862, 885 (E.D.N.Y. 1979) (Weinstein, J.), *aff'd,* 632 F. 2d 999 (2d Cir. 1980), *cert. denied* 101 S.Ct. 1739 (1981).

This Court has acknowledged, in the school desegregation context, how profoundly the patterns generated by discriminatory employment policies can affect a school's academic environment. In *Bradley* v. *School Board of Richmond,* 382 U.S. 103 (1965) (per curiam), this Court held that the impact of racially based faculty allocations upon the educational opportu-

nities available to black students could not be deemed "speculative," but must be carefully scrutinized in evaluating the acceptability of a school desegregation plan under the principles of *Brown.* Similarly, in *Rogers* v. *Paul,* 382 U.S. 198 (1965), the Court held that black students "plainly had standing" to challenge an alleged policy of assigning faculty on the basis of race because "racial allocation of faculty denies [students] equality of educational opportunity without regard to segregation of pupils." *Id.,* at 200.

Bradley and *Rogers* established that discrimination against school *employees* could violate *students'* constitutional rights under the Fourteenth Amendment.[25] The lower federal courts have recognized that racially discriminatory employment practices can violate Title VI of the 1964 Civil Rights Act as well. Given the oft-noted similarities between Title VI and Title IX, *see Cannon* v. *University of Chicago,* 441 U.S. 677, 694-709 (1979), these cases are particularly pertinent to the dispute at hand. Thus, in *United States* v. *Jefferson County Board of Education,* 372 F. 2d 836 (5th Cir. 1966), *cert. denied* 389 U.S. 840 (1967), the Fifth Circuit rejected arguments that the exclusion

[25]The idea that discrimination directed against one group of persons can harm another, related, group is certainly not new to the jurisprudence of civil rights. As early as 1971, the Fifth Circuit, in *Rogers* v. *E.E.O.C.,* 454 F. 2d 234 (5th Cir. 1971) held that an employer's discriminatory treatment of Hispanic *clients* could create a discriminatory and offensive work environment for Hispanic *employees,* and would thus support a charge of employment discrimination under Title VII. Similarly, in *Gray* v. *Greyhound Lines, East,* 545 F. 2d 169 (D.C. Cir. 1976;, the District of Columbia Circuit explicitly recognized the psychological harm to present black employees flowing from an employer's racially discriminatory hiring practices, and held that such psychological harm could provide the basis for a Title VII claim. More recently, in a case involving sexual harassment, the District of Columbia Circuit held that Title VII was violated where "an employer created or condoned a substantially discriminatory work *environment,* regardless of whether the complaining employees lost any tangible job benefits as a result of the discrimination." *Bundy* v. *Jackson,* 641 F. 2d 934, 943-44 (1981) (emphasis in original).

of employment practices under Section 604 of Title VI barred any action requiring the desegregation of faculty and school personnel.[26] Drawing upon the Supreme Court decisions in *Bradley* and *Rogers,* the court in *Jefferson County* held that nondiscriminatory allocation of faculty was "indispensible to the validity of a desegregation plan," and that racial discrimination in the employment and assignment of teachers violated students' educational rights under Title VI "wholly aside from its effect upon individual teachers." *Id.* at 885, 883.

Subsequent cases establish that the nexus between discriminatory employment practices and the educational rights of students is not limited to the segregation context. In *United States* v. *El Camino Community College District,* 600 F. 2d 1258 (9th Cir. 1979), the Ninth Circuit upheld HEW's authority under Title VI to investigate the employment practices of a community college on the grounds that the agency "must have substantial latitude in scrutinizing policies and practices of the institution that may have a discriminatory impact on the intended beneficiaries of assistance." *Id.* at 1260 (footnote omitted). While acknowledging that HEW's requirements might be burdensome, the court in *El Camino* emphasized that a greater good justified the inconvenience, namely, an education "entirely free from any discriminatory taint." *Id.* at 1261 (footnote omitted).

The results of sex-based employment discrimination also "taint" an institution's educational environment. They suggest to students that women as a class are less capable and less deserving than men. Recently, in *Caulfield* v. *Board of Education of the City of New York,* 632 F.2d 999 (2d Cir. 1980) *cert. denied,* 101 S.Ct. 1739 (1981), the Second Circuit made explicit

[26]The argument for upholding DOE's authority to prohibit discrimination in educational employment is thus even stronger under Title IX than under Title VI. Section 604 of Title VI explicitly excludes most employment practices from the statute's coverage, yet courts have nevertheless recognized the effect of employment discrimination on the rights of students. Title IX contains no such statutory exclusion.

the connection between disciminatory employment practices and harm to female students. Rejecting the school board's argument that HEW lacked jurisdiction under Title IX to investigate the school system's employment practices, the Second Circuit noted:

> the government could reasonably proceed on the theory that a school system's discrimination against women in access to supervisory positions would have a discriminatory effect on students, the direct beneficiaries of the federal aid.

Id. at 1005, citations omitted.

C. *The Distinctive Character of Student Bodies Renders These Regulations Necessary to Effectuate the Provisions of Title IX*

The relative brevity of various stages of the educational process, coupled with the time-consuming nature of judicial or administrative action, renders these regulations necessary "to effectuate the provisions" of Title IX. In many cases, the students whose educational experieces are tainted by the effects of employment discrimination will graduate or transfer from the offending institution before legal relief can be obtained. By establishing departmental jurisdiction over discriminatory employment practices, the regulations provide for the correction of harmful conditions that would otherwise evade review.

The often subtle and cumulative nature of these injuries increases the need for departmental jurisdiction. Individual students, particularly at the elementary and secondary school levels, may not immediately recognize the corrosive effects of employment discrimination on their educational environment. By affording a mechanism whereby this discrimination can be remedied, the regulations ensure that no such student will be denied the benefits of any educational program receiving federal financial aid.

CONCLUSION

Sex discrimination in educational employment directly affects the hearts and minds of female students. When educational institutions are permitted to act in ways which denigrate the abilities and ignore the rights of women, female students suffer. To allow such practices undermines the very policy of nondiscriminatory education mandated by Title IX. For the foregoing reasons, this Court should uphold the regulations at issue and affirm the judgment of the Second Circuit Court of Appeals.[27]

Respectfully submitted,

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September 8, 1981

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[27]The following members of the Yale Law Women's Association made substantial contributions to the research and writing of this brief: Jane Ellis, Candice Hoke, Susan Knipps, Jana Singer, Anne Verdon, and Rhonda Wasserman.